IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1949

No. 433

NATIONAL LABOR RELATIONS BOARD,
Petitioner.

v.

MASSEY GIN AND MACHINE WORKS, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI AND OBJECTIONS TO THE JURISDICTION OF THIS COURT

Massey Gin and Machine Works, Inc., respectfully interposes objections to the jurisdiction of this Court to grant the writ of certiorari and opposes the grant of the writ.

As the petition indicates, this is one of five cases which the Board has selected as vehicles for expressing its displeasure with the Court of Appeals for the Fifth Circuit. In this case the Board specifically refers to the petition for certiorari, and particularly to its statement of reasons for granting the writ, in No. 431, *National Labor Relations Board v. Atlanta Metallic Casket Co.*, (Petition, page 8). Its repeated references to the four companion cases are obviously intended to incorporate by reference in this petition the reasons assigned in those cases which are common to all. Following this pattern, respondent herein incorporates by reference the objections and the reasons therefor assigned by the respondents in the companion cases which are common to all, particularly in No. 431, and submits that they should be sustained in this case.

In this connection we call attention to the fact that the date of the decision below, the date of the order extending the time for filing the petition for certiorari, and the date of the first notice to respondent or its counsel of the extension of time and of any intention to apply for the writ, are all identical with the corresponding dates in the Atlanta Metallic Casket Company case, No. 431.

With specific reference to this case, this Court is without jurisdiction, and the writ should be denied, for the further reason that no error is specified which presents any question for decision by this Court.

According to the petition (pages 6 and 7) there are six separate and distinct grounds on any one of which the lower court could have refused enforcement. If the Board was wrong on any one of the six questions the decision of the Court of Appeals was admittedly correct. The Board has not asked this Court to consider those questions, has not contended that any question was erroneously decided, and has not even claimed, either in the petition or in the motion for rehearing in the court below, that the lower court committed error in refusing the enforcement order. The sole complaint in this case, considered apart from the companion cases, is that the lower court did not write an opinion stating the specific reasons for its decision.[1]

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[1]The petition (page 2) states that this is the "Question Presented." The specification of errors (petition, page 8), is limited to this point. Although it specifies that the "court below erred in denying the Board's petition for rehearing", the prayer of the petition for rehearing was as follows: "Wherefore, it is prayed that a rehearing be granted and that, upon reconsideration of the Board's order, the Court vacate and set aside its opinion of April 14, 1949, and issue in its stead an opinion either enforcing the Board's order or stating the reasons for denial of the Board's order, and grant such other and further relief as the Court may deem proper." To specify as error the failure to grant this prayer is to do no more than to specify as error the failure to write an opinion.

While it is no doubt true that the Supreme Court may remand a case for specific consideration of certain questions by the lower court, that is done only where a question is presented to the Supreme Court for decision which cannot be decided before, or can best be decided after, other specific questions have been passed on by the lower court. Since the order of the court below is not alleged to be erroneous no question is presented to the Supreme Court in this case and there is no need for any further decision by the lower court.

For these reasons we respectfully submit the petition for a writ of certiorari should be denied.

A. O. B. Sparks
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Attorneys for Respondent